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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--X
CARLOS H. ROMERO, on behalf of himself and
on behalf of all other persons similarly situated,

Plaintiff,

-against-

GARRIDO COMPANY TRUCK, INC. and
IVAN W. GARRIDO, Individually,

Defendants.
--X

COMPLAINT

Plaintiff, CARLOS H. ROMERO, on behalf of himself and on behalf of all other persons similarly situated, by and through his attorney, Peter A. Romero, Esq., complaining of the Defendants, allege as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action to recover unpaid minimum and overtime wages that Defendants owe him and similarly situated current and former employees of Defendants under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., ("FLSA"), and the New York Labor Law Articles 6 and 19, §650 et seq., and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142 ("NYLL").

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1337 and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

3. In addition, the Court has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. §216(b).

4. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §1391.

5. Defendants do business in the State of New York, within the Eastern District of New York, and maintain places of business at 70 Marcus Drive, Melville, New York and 265 East 17th Street, Huntington Station, New York.

PARTIES

6. The Plaintiff, CARLOS H. ROMERO, is a resident of the County of Suffolk, State of New York.

7. At all times relevant to the complaint, Plaintiff, CARLOS H. ROMERO, was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. §203(e), and New York State Labor Law §190(2).

8. Plaintiff, CARLOS H. ROMERO, was a non-exempt employee of Defendants from in or about 2012 until in or about October 2016.

9. Upon information and belief, Defendant GARRIDO COMPANY TRUCK, INC., was and still is a domestic business corporation organized and existing pursuant to the laws of the State of New York owned by the Defendant, IVAN W. GARRIDO (collectively "Defendants").

10. At all times relevant, GARRIDO COMPANY TRUCK, INC. was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. §203(d), and New York State Labor Law §190(3).

11. At all times relevant, the Defendant, IVAN W. GARRIDO, was and still is the President or Chief Executive Officer of GARRIDO COMPANY TRUCK, INC.

12. At all times relevant, the Defendant, IVAN W. GARRIDO, was and still is the owner of GARRIDO COMPANY TRUCK, INC.

13. At all times relevant, the Defendant, IVAN W. GARRIDO, had authority to make payroll and personnel decisions for GARRIDO COMPANY TRUCK, INC.

14. At all times relevant, the Defendant, IVAN W. GARRIDO, was and still is active in the day to day management of GARRIDO COMPANY TRUCK, INC., including the payment of wages to the Plaintiff and determining what wages were paid to Plaintiff and employees similarly situated to Plaintiff.

15. At all times relevant, the Defendant, IVAN W. GARRIDO, exercised control over the terms and conditions of Plaintiff's employment in that he has the power to and does: hire and fire employees, determine and approve rates and methods of pay, determine and approve work schedules, supervise and control the work of the employees, and otherwise affect the quality of the employees' employment.

16. At all times relevant, the Defendant, IVAN W. GARRIDO, was and still is an "employer" within the meaning of federal and state wage and hour laws.

FACTS

17. Upon information and belief, Defendants provide trucking and furniture delivery services.

18. Upon information and belief, Defendants own and/or lease approximately 20 box trucks, as well as vans, and employer drivers and helpers.

19. Upon information and belief, Defendants provide trucking and delivery services to Bob's Furniture of NY, LLC.

20. Plaintiff was employed as a driver by Defendants from in or about 2012 until on or about October 2016.

21. As a driver, Plaintiff made approximately 15 furniture delivery stops on Long Island each workday. Plaintiff never delivered furniture to locations outside of New York State and he was not likely to be called upon to travel out-of-state.

22. Plaintiff regularly worked Tuesday through Saturday.

23. Each workday, Plaintiff reported for work at 5:40 a.m. at Defendants' trucking facility, where he received his route of furniture deliveries for the day.

24. There was no fixed time at which Plaintiff finished work each day, since the number and location of delivery stops varied, as did the length of time required to complete each delivery.

25. Plaintiff often did not finish making deliveries until 6:00 p.m. and sometimes until 8:00 p.m.

26. Plaintiff was required to return to Defendants' trucking facility after he completed his last delivery stop to unload any furniture returned by customers and to load the truck for the following day.

27. For example, Plaintiff worked more than 40 hours in the following weeks:

a. during the week beginning May 20, 2016, Plaintiff delivered furniture from 6:00 a.m. until 4:00 p.m. on Tuesday; from 6:00 a.m. until 6:00 p.m. on Wednesday; from 6:00 a.m. until 6:00 p.m. on Thursday; from 6:00 a.m. until 5:00 p.m. on Friday; and from 6:00 a.m. until 5:00 p.m. on Saturday;

b. during the week beginning June 6, 2016, Plaintiff delivered furniture from 6:00 a.m. until 4:00 p.m. on Tuesday; from 6:00 a.m. until 8:00 p.m. on Wednesday; from 6:00 a.m. until 5:00 p.m. on Thursday; from 6:00 a.m. until 8:00 p.m. on Friday; and from 6:00 a.m. until 5:00 p.m. on Saturday;

c. during the week beginning June 13, 2016, Plaintiff delivered furniture from 6:00 a.m. until 7:00 p.m. on Tuesday; from 6:00 a.m. until 3:00 p.m. on Wednesday; from 6:00 a.m. until 3:00 p.m. on Thursday; from 6:00 a.m. until 8:00 p.m. on Friday; and from 6:00 a.m. until 6:00 p.m. on Saturday;

d. during the week beginning June 20, 2016, Plaintiff delivered furniture from 6:00 a.m. until 7:00 p.m. on Tuesday; from 6:00 a.m. until 4:00 p.m. on Wednesday; from 6:00 a.m. until 4:00 p.m. on Thursday; from 6:00 a.m. until 4:00 p.m. on Friday; and from 6:00 a.m. until 5:00 p.m. on Saturday.

28. Throughout his employment with Defendants, Plaintiff regularly worked more than 40 hours in a workweek.

29. Plaintiff worked more than 40 hours in most workweeks in which he was employed by Defendants.

30. On most workdays, Plaintiff worked more than 10 hours in a single workday.

31. Defendants had control over the conditions of Plaintiff's employment, work schedule, the rates and methods of payment of Plaintiff's wages and the maintenance of his employment records.

32. Defendants paid Plaintiff a fixed daily regardless of the actual number of hours Plaintiff worked each workweek.

33. Plaintiffs and other similarly situated drivers and helpers worked more than forty hours in most workweeks in which they were employed by the Defendants but were not paid overtime pay.

34. Defendants failed to pay Plaintiff and other similarly situated drivers and helpers a premium for time worked more than 40 hours per week throughout the entire term of Plaintiff's employment with the Defendants.

35. Plaintiff and other similarly situated drivers and helpers regularly worked more than 10 hours in a single workday.

36. Defendants failed to pay Plaintiff and other similarly situated drivers and helpers spread-of-hours pay for each day in which their spread of hours exceeded 10 hours.

37. Defendants did not use a punch card timeclock, digital scan system, or other means to verify the time Plaintiff began and ended work each day.

38. Defendants willfully disregarded and purposefully evaded record keeping requirements of the FLSA and the NYLL by failing to maintain accurate records of the hours worked by and wages paid to Plaintiff and similarly situated drivers and helpers.

39. Defendants unlawfully failed to pay Plaintiff and other similarly situated drivers and helpers proper compensation in violation of NYLL Article 6, 190 et seq. and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142.

40. Defendants made unlawful deductions from Plaintiff's wages including deductions to recoup the cost of traffic and/or parking tickets; deductions for damage sustained to Defendants' trucks; and deductions for truck loading fees in violation of NYLL §193.

41. From in or about 2015 through October 2016, Defendants misclassified Plaintiff as an "independent contractor" and failed to withhold and remit the appropriate Social Security and

Medicare taxes for Plaintiff in violation of the Federal Insurance Contributions Act ("FICA"), failed to secure insurance coverage for Plaintiff in violation of the Workers Compensation Law, and failed to provide unemployment insurance coverage for Plaintiff.

COLLECTIVE ACTION ALLEGATIONS

42. At all times relevant, Plaintiff and other FLSA Collective Action Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subject to Defendants' decision, policy, plan and common policies, programs, practices, procedures, protocols, routines, and rules willfully failing and refusing to pay them overtime pay for hours worked after forty (40) hours each week.

43. Upon information and belief, there are many current and former employees who are similarly situated to the Plaintiff, who have been underpaid in violation of the FLSA. The named Plaintiff is representative of those other workers and are acting on behalf of the Defendants' current and former employees' interests as well as their own interest in in bringing this action.

44. Plaintiff seeks to proceed as a collective action with respect to the First Claim and Second Claim for Relief, pursuant to 29 U.S.C. §216(b) on behalf of himself and the following similarly situated employees:

> All persons who are currently, or have been employed by the Defendants, at any time during the three (3) years prior to the filing of their respective consent forms, who worked as drivers and helpers.

45. The First and Second Claim for Relief are properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. §216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purposes of notice and other purposes related to this action, their names and addresses are readily available from the Defendants. These similarly situated employees should be notified of and allowed to opt-into this action pursuant to 29 U.S.C. §216(b). Unless

the Court promptly issues such a notice, persons similarly situated to the Plaintiffs, who have been unlawfully deprived of overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled and which has been unlawfully withheld from them by the Defendants.

RULE 23 CLASS ACTION ALLEGATIONS
NEW YORK STATE LABOR LAW

46. Plaintiff brings New York Labor Law claims on behalf of himself and a class of persons under F.R.C.P. Rule 23 consisting of all persons who are currently, or have been, employed by the Defendants as drivers and helpers at any time during the six (6) years prior to the filing of this Complaint (hereinafter referred to as the "Class" or the "Class Members").

47. The Class Members are readily ascertainable. The number and identity of the Class Members are determinable from the records of Defendant. The hours assigned and worked, the position held, and rates of pay for each Class Member may also be determinable from Defendants' records. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under F.R.C.P. Rule 23.

48. The proposed Class is numerous such that a joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Although the precise number of such persons is unknown because the facts on which the calculation of that number rests presently within the sole control of Defendants, upon information and belief there are over forty (40) individuals who are currently, or have been, employed by the Defendants as drivers and helpers at any time during the six (6) years prior to the filing of this Complaint.

49. Defendants have acted and/or have refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

50. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

(a) whether Defendants failed and/or refused to pay the Plaintiff and Class Members the minimum wage for all hours worked;

(b) whether Defendants failed and/or refused to pay the Plaintiff and Class Members the overtime wages for hours worked beyond forty hours in a single workweek;

(c) whether Defendants failed and/or refused to pay the Plaintiff and Class Members spread-of-hours pay when they worked more than ten hours in a single workday;

(d) whether Defendants made unlawful deductions to the wages of Plaintiff and Class Members in violation of NYLL Section 193;

(e) whether Defendants failed to keep and maintain true and accurate payroll records for all hours worked by Plaintiffs and the Class;

(f) whether Defendants' policies, practices, programs, procedures, protocols, and plans regarding keeping and maintaining payroll records complied with the law;

(g) what was the nature and extent of the Class-wide injury and the appropriate measure of damages for the class; and

(h) whether Defendants' general practice of failing and/or refusing to pay Plaintiff and Class Members minimum wage, overtime and spread-of-hours pay was done willfully and/or with reckless disregard of the state wage and hour laws.

51. Plaintiff's claims are typical of the claims of the Class that he seeks to represent. Defendants failed to pay minimum wage, failed to pay overtime wages, and failed to maintain

required and accurate records of wages and overtime wages for the hours worked after forty (40) hours per week.

52. Plaintiff's claims are typical of those claims that could be alleged by any member of the Class, and the relief sought is typical of the relief that would be sought by each member of the Class in separate actions. All the Class Members were subject to the same corporate practices of Defendants. Defendant's corporate-wide policies and practices affected all Class Members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each Class Member. Plaintiffs and other Class Members sustained similar losses, injuries and damages arising from the same unlawful policies, practices, and procedures.

53. Plaintiff can adequately protect the interests of the Class and has no interests antagonistic to the Class.

54. Plaintiffs has retained counsel competent and experienced in class actions, wage and hour litigation, and employment litigation.

55. A class action is superior to other available methods for the fair and efficient adjudication of litigation, particularly in the context of wage and hour litigation like the present action, where individual Plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate Defendant.

56. Class action treatment will permit many similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant savings of these costs.

57. The members of the Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that may result in inconsistent judgments about Defendant's practices.

58. Furthermore, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide Class Members who are not named in the complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing those risks.

FIRST CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT

59. Plaintiff, on behalf of himself and the FLSA Collective, allege and incorporate by reference all allegations in all preceding paragraphs.

60. Defendants employed Plaintiffs and willfully failed to pay Plaintiffs the minimum wage for all hours worked in violation of the FLSA.

61. The complete records concerning the number of hours worked by Plaintiffs and the wages paid to Plaintiffs are in the exclusive possession and control of Defendants.

62. Due to the willful underpayment of wages alleged above, Plaintiffs have incurred damages and Defendants are indebted to them in the amount of the unpaid minimum wages due, together with liquidated damages and interest, and attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

SECOND CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT

63. Plaintiffs, on behalf of themselves and the FLSA Collective, allege and incorporate by reference all allegations in all preceding paragraphs.

64. Defendants employed Plaintiffs for workweeks longer than forty (40) hours and willfully failed to pay the Plaintiffs a premium for the hours they worked after forty (40) hours per week in violation of the FLSA.

65. Defendants' violations of the FLSA, as described in this Complaint have been willful and intentional. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs.

66. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §255.

67. Due to Defendants' unlawful acts, Plaintiffs are entitled to recover overtime compensation and other wages in amounts to be determined at trial, liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

THIRD CLAIM FOR RELIEF
NEW YORK LABOR LAW: MINIMUM WAGE

68. Plaintiffs allege and incorporate by reference all allegations in all preceding paragraphs.

69. Defendants employed Plaintiff and Class Members and willfully failed to pay Plaintiff and Class Members the minimum wage for all hours worked in violation of the NYLL.

70. The complete records concerning the number of hours worked by Plaintiff and Class Members and the wages paid to Plaintiff and Class Members are in the exclusive possession and control of Defendants.

71. As a consequence of the willful underpayment of wages alleged above, Plaintiff and Class Members have incurred damages and Defendants are indebted to them in the amount of the unpaid minimum wages due, together with liquidated damages and interest, and attorneys' fees and costs.

FOURTH CLAIM FOR RELIEF
NEW YORK LABOR: OVERTIME WAGES

72. Plaintiffs allege and incorporate by reference all allegations in all preceding paragraphs.

73. Defendants employed Plaintiff and Class Members for workweeks longer than forty (40) hours and willfully failed to pay the Plaintiff and Class Members overtime pay for the hours they worked after forty (40) hours per week in violation of New York Labor Law.

74. By Defendants' failure to pay Plaintiff and Class Members overtime wages for hours worked after 40 hours per week, Defendants willfully violated the New York Labor Law Article 19, §650 et seq., and the supporting New York State Department of Labor Regulations, including 12 N.Y.C.R.R. Part 142.

75. Due to Defendants' violations of the New York Labor Law, Plaintiff and Class Members are entitled to recover from Defendants unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

FIFTH CLAIM FOR RELIEF
NEW YORK LABOR LAW: SPREAD-OF-HOURS PAY

76. Plaintiff alleges and incorporates by reference all allegations in all preceding paragraphs.

77. Defendants failed to pay Plaintiff and Class Members one additional hours' pay at the basic minimum wage rate for each day the spread of hours exceeded ten in violation of New York Labor Law 650 et seq. and 12 NYCRR §142-2.4.

78. Defendants' failure to pay spread-of-hours pay was willful.

79. Due to Defendants' violations, Plaintiff and Class Members are entitled to recover unpaid wages, liquidated damages, statutory interest and attorneys' fees and costs.

SIXTH CLAIM FOR RELIEF
NEW YORK LABOR LAW SECTION 193

80. Plaintiff alleges and incorporates by reference all allegations in all preceding paragraphs.

81. Labor Law §193 prohibits employers from making any deductions from wages, except as required by law or regulation, or authorized by the employee for the employee's benefit.

82. Defendants made deductions to the wages of Plaintiff and Class Members for the benefit of the Defendants in violation of Labor Law §193.

83. Defendants violated NYLL §193 and 12 NYCRR §142-2.10.

84. Due to Defendants' violations of NYLL §193 and 12 NYCRR §142-2.10, Plaintiff and Class Members have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated persons, prays for the following relief:

(i.) Certification of this case as a collective action pursuant to 29 U.S.C. §216(b);

(ii.) Unpaid minimum wages and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. §201 et seq. and the supporting United States Department of Labor regulations;

(iii.) Unpaid overtime wages and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. §201 et seq. and the supporting United States Department of Labor regulations;

(iv.) Certification of a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(v.) Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under New York Labor Law, Article 19, §650 et seq., and the supporting New York State Department of Labor Regulations;

(vi.) Unpaid minimum wages, overtime and spread-of-hours pay pursuant to New York Labor Law, Article 19, §§650 et seq., and the supporting New York State Department of Labor Regulations, plus liquidated damages and pre- and post-Judgment interest;

(vii.) Damages pursuant to New York State Labor Law §193;

(viii.) All attorneys' fees and costs incurred in prosecuting these claims; and

(ix.) Such other relief as this Court deems just and proper.

Dated: Babylon, New York
November 9, 2016

LAW OFFICE OF PETER A. ROMERO PLLC

By: ______________________

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Attorney for Plaintiff

CONSENT TO SUE

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf, and on behalf of all other persons similarly situated to me, against Garrido Company, Truck, Inc. and Ivan W. Garrido to recover unpaid minimum and/or overtime wages owed pursuant to the federal Fair Labor Standards Act of 1938, as amended 29 U.S.C. §201 et seq. I consent to being named as the representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning this action. I hereby authorize the Law Office of Peter A. Romero PLLC to represent me in this case.

Carlos H Romero
Carlos H. Romero

7-11-16
Date